

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ MAR 08 2012 ★

-----X  
DE PING SONG, YANG XU, BAI SONG LI  
CHUN SEN ZHU, YAN ZHANG and JIE LI,

LONG ISLAND OFFICE

MEMORANDUM AND ORDER

Plaintiffs,

CV 09-5566

-against-

(Wexler, J.)

47 OLD COUNTRY, INC. (d/b/a BABI I),  
JILLY SN, INC. (d/b/a BABI I), BABI NAIL  
USA II CORP. (d/b/a BABI III), KUI SOON  
CHO (a/k/a ROSEMARY), HAE SOOK KIM,  
IN BAE KIM (a/k/a FRANK, a/k/a INBAE  
KIM, a/k/a IN B. KIM a/k/a BAE KIM, a/k/a  
BAE I. KIM), and HYE YOUNG CHOI (a/k/a  
JACKY, a/k/a HAEYOUNG CHOI, a/k/a/  
HAE YOUNG CHOI),

Defendants.

-----X

APPEARANCES:

The Legal Aid Society  
BY: AARON MICHAEL HALEUGA, ESQ.  
KAREN CACACE, ESQ.

Attorneys for Plaintiffs  
199 Water Street, 3<sup>rd</sup> Floor  
New York, New York 10038

ZABELL & ASSOCIATES, P.C.  
BY: SAUL D. ZABELL, ESQ.,  
Attorneys for Defendants  
4875 Sunrise Highway Suite 300  
Bohemia, New York 11716

WEXLER, District Judge:

This is a case that alleging violations of federal and state wage, hour, and employment discrimination laws, including retaliation. Plaintiffs are six Chinese individuals who were

employed at nail salons doing business under the name "Babi," at various times between August 2004 and the present.

I. Pending Motions in Limine

This case is scheduled for jury selection on March 14, 2012, with trial to commence shortly thereafter. Presently before the court are Plaintiffs' several motions in limine. Upon consideration of the documents before the court, as well as the court's familiarity with this matter, the court rules as follows.

A. Immigration and Income Tax Issues

The court grants the motion to preclude Defendants from eliciting any evidence relating to Plaintiff's immigration status. Such evidence is completely irrelevant both to Plaintiffs' claims and credibility, and any such inquiry could be highly prejudicial. Accordingly, no such evidence shall be elicited at trial. See Flores v. Amigon, 233 F. Supp.2d 462, 462 (E.D.N.Y. 2002) ("all employees, regardless of their immigration status, are protected by the provisions of the FLSA"); accord Solis v. Cindy's Total Care, Inc., 2011 WL 5170009 \*1 (S.D.N.Y. 2011) (evidence of immigration status irrelevant to FLSA claims); Rengifo v. Erevos Enterprises, Inc., 2007 WL 894376 \*1 n.1 (S.D.N.Y. 2007) (same ruling with respect to claims under New York law and Section 1981).

The court makes the same ruling with respect to Plaintiffs' tax filings. Such information is equally irrelevant to the issue of whether Plaintiffs were properly compensated for hours worked, and no reference thereto will be allowed at trial. Uto v. Job Site Services Inc., 269 F.R.D. 209, 212 (E.D.N.Y. 2010).

B. Evidence of Cash Records

The court reserves decision as to whether Plaintiffs are entitled to particular jury instructions or adverse inferences to be drawn with respect to the alleged failure to produce evidence of cash records. Such evidence is certainly relevant to establishing a claim under the FLSA. See Romero v. Jocorena Bakery, Inc., 2010 WL 4781110 \*2 (E.D.N.Y. 2010); Padilla v. Manlapaz, 643 F. Supp.2d 298, 302 (E.D.N.Y. 2009) see 29 U.S.C. §203(s)(1)(A)(ii) (defining “an enterprise engaged in commerce” to have a combined “annual gross volume of sales made or business done” that is “not less than \$500,000”).

At this point, the court does not know whether this element of Plaintiffs’ FLSA claims is conceded. If it is not, the court will rule on whether Plaintiffs are entitled to an instruction on this issue after development of facts, and any necessary legal argument to be made at trial.

C. Video Footage

The court also reserves decision with respect to the relevance and admissibility of any video footage from the salons, as well as the proper scope of any examination as to this issue. If such footage is sought to be introduced, the court will determine whether, as alleged by Plaintiffs, it was selectively produced. The court will also determine whether any such footage will be admitted to evidence, and the proper scope of cross-examination with respect thereto.

D. Remaining Evidentiary Issues

The court reserves for trial its decision as to any other motions in limine. The court encourages counsel to confer as to issues of admissibility prior to trial to allow for the orderly introduction of evidence. The court reminds the parties that it will not allow the introduction of any evidence not exchanged during the course of discovery.

Jury selection will, as previously noted, commence on March 14, 2012 at 9:00 A.M.

SO ORDERED.

*S/L. Wexler*

LEONARD D. WEXLER  
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York

March 8, 2012